

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.383 OF 2022

1. Ashwini w/o Mahesh Bhogam
Age: 42 years, Occu.: Household,
R/o. Plot No.2, Jay Bhavani Colony,
A-ward, Ring Road,
Phulewadi, Dist. Kolhapur
2. Ratnaprabha w/o Suhas More
Age: 66 years, Occu.: Household,
R/o. Ring Road, Isolation Hospital,
Plot No.70(B), Jyotirling Nagar,
Dist. Kolhapur
3. Anuradha w/o Sandip Shinde
Age: 35 years, Occu.: Household,
R/o. Ring Road, Isolation Hospital,
Plot No.70(B), Jyotirling Nagar,
Dist. Kolhapur
4. Archana w/o Shridhar Chavhan
Age: 40 years, Occu.: Household,
R/o. E-38, Swami Samarth Colony,
Vikram Nagar, Kolhapur
5. Shridhar Shivajirao Chavhan
Age: 45 years, Occu.: Business,
R/o. E-38, Swami Samarth Colony,
Vikram Nagar, Kolhapur

.. APPELLANTS

VERSUS

1. The State of Maharashtra
Through Investigation Officer,
Kadim Jalna Police Station,
Tq. and Dist. Jalna

2. XYZ

.. RESPONDENTS

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Mr. A. A. Nimbalkar h/f Mr. R. V. Gore, Advocate for appellants.
Mr. S. J. Salgare, APP for respondent No.1 – State.
Mr. N. K. Tungar, Advocate for respondent No.2.

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**CORAM : SMT. VIBHA KANKANWADI AND
RAJESH S. PATIL, JJ.**

DATE : 30th September, 2022

ORDER :- [Per Smt. Vibha Kankanwadi, J.]

. Present appeal has been filed under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "Atrocities Act") challenging the order of rejection of bail application under Section 438 of the Code of Criminal Procedure (for short "Cr.P.C.") in Bail Application No.112 of 2022 by learned Additional Sessions Judge / Special Judge, under Atrocities Act, Jalna on 04.02.2022 in connection with Crime No.648 of 2021 dated 14.12.2021 registered with Kadim Jalna Police Station, Taluka and District Jalna for the offences punishable under Sections 366, 376, 328, 498(A), 504, 506 read with Section 34 of Indian Penal Code (for short "IPC") and under Sections 3(1)(w)(i) (ii), 3(2)(v) of the Atrocities Act.

2. Heard learned Advocate Mr. A. A. Nimbalkar holding for learned Advocate Mr. R. V. Gore for the appellant, learned APP Mr. S. J. Salgare for respondent No.1 – State and learned Advocate Mr. N. V. Tungar for respondent No.2.

3. It has been vehemently submitted on behalf of the appellants that the appellants are the relatives of original accused No.1 –

Anant Suhas More. It is submitted that after facebook chats respondent No.2 and Anant More fell in love. Respondent No.2 has, in fact, voluntarily married to Anant More. The photographs have been produced, which were taken at the time of marriage, which was performed at Nrusinhwadi, Tq. Shirol, Dist. Kolhapur. Even the certificate of registration of marriage has been produced, which shows that the marriage was performed on 02.09.2021. Thereafter, till 14.12.2021, there was absolutely no complaint by respondent No.2. Now, she is coming with a story that Anant More had forcibly solicited her friendship. She was not ready for the marriage, yet he used to give threats. She says that she went near town hall on 01.09.2021 and then she was forcibly made to sit in an auto-rickshaw and was taken to Motibag, where a car was waiting for her. There were two ladies and two gents in the car. She was made to consume water like substance from a bottle and then she had giddiness. She was forced to marry and it is said that Anant More had forcible sexual intercourse with her. It is then stated that appellants and relatives started harassing her to bring amount of Rs.16,00,000/- and then she gave information about the same to her parents and then she has lodged the report, which appears to be a false. Everything has been done by the girl voluntarily and she is major, yet for the ultimate reason, she has taken up such a step. Anant More is not before the Court. The custody of the appellants

is not required for any purpose. They are ready to abide by the terms of the bail.

4. Per contra, the learned APP as well as learned Advocate appearing for respondent No.2 strongly opposed the appeal and submitted that the appellants have acted with the common intention of Anant More. All the appellants had the knowledge that respondent No.2 belongs to Scheduled Caste. The appellants have thereafter harassed the informant to bring amount of Rs.10,00,000/- to 15,00,000/-. It is also stated by the learned APP that charge-sheet has been filed against the appellants under Section 299 of Cr.P.C. on 22.03.2022 and a copy of the charge-sheet is then made available to the Court along with the police papers by the learned APP.

5. At the outset, it is to be noted that the photographs those have been produced as well as the certificate of registration of marriage issued by Registrar of Marriages, Kolhapur Municipal Corporation, Kolhapur on 23.09.2021 would show that the girl was present even before the Registrar of Marriage and there were other members also at the time of marriage, before whom she appears to have not made any grievance. Apparent observation can be made in respect of the photographs that she does not appear to be under the influence of any intoxication. Now, the investigation is complete

and the charge-sheet is also filed. Therefore, the custodial interrogation of the appellants is not required. The appellants before this Court are, the mother who is aged around 66 years, married sister of Anant More and also the brother-in-law of Anant More. The statement of the informant has been recorded under Section 164 of Cr.P.C. and it is nothing but replica of her FIR. However, it is to be noted that in the FIR also she has stated that she had made complaint against the appellants with Rajarampuri Police Station, Kolhapur. The investigation papers show that the statement of mother of the informant was recorded on 07.11.2021. The investigation papers further show that in connection with the said complaint, statement of the girl has been taken by police Head Constable of Rajarampuri Police Station on 07.11.2021 itself and in that statement, she has stated that she came to know Anant More through facebook and thereafter, they developed love relationship. Her family members were not knowing about the said love affair and, in fact, Anant More used to meet her occasionally at Jalna. They had taken decision to marry in August, 2021. She says that in between they were in contact through facebook as well as Whatsapp. She left her home on 01.09.2021 around 11.00 a.m. without informing anybody in her house as she had taken decision to marry Anant. Anant had come along with his two sisters in four wheeler and then they went towards Kolhapur. She states that the

marriage was performed at Nrusinhwadi on 02.09.2021. She says that in the evening, she informed about her marriage to her father on phone. On that day, the father informed her that he has lodged missing complaint in her respect. Her parents, brother and other relatives went to Kolhapur on 04.09.2021 and asked her to accompany them, but she refused. She continued her stay with her husband. She then states that since the marriage, she was feeling that she is under pressure from her husband and there may be a threat from her husband to her, she got that feeling and, therefore, she made phone call to her parents stating that they should take her from Kolhapur. Thereupon, her parents went to Kolhapur and gave the report at Rajarampuri Police Station. She, in clear terms, has stated that she has no desire to stay under pressure of her husband and, therefore, she would go along with her parents.

6. In the abovesaid statement, there is absolutely no whisper of any of the acts by the present appellants. Even if the statements of the parents of the informant have been recorded that is all hearsay. Under this circumstance, the learned Special Judge ought to have considered that all these things have not taken place only because the informant is member of a particular caste. There is absolutely no evidence to invoke Section 498-A of IPC and it appears that the girl had gone voluntarily since she is major. The application ought

to have been allowed. The appeal deserves to be allowed. Hence, the following order :-

ORDER

- I) The Appeal stands allowed.
- II) The order below Exhibit-1 in Cri. Bail Application No.112 of 2022 passed by learned Additional Sessions Judge / Special Judge, under the Atrocities Act, Jalna on 04.02.2022 is hereby set aside. The said application stands allowed.
- III) In the event of arrest of appellants viz. (i) Ashwini w/o Mahesh Bhogam, (ii) Ratnaprabha w/o Suhas More, (iii) Anuradha w/o Sandip Shinde, (iv) Archana w/o Shridhar Chavhan and (v) Shridhar Shivajirao Chavhan, in connection with Crime No.648 of 2021 registered with Kadim Jalna Police Station, Dist. Jalna for the offences punishable under Sections 366, 376, 328, 498(A), 504, 506 read with Section 34 of IPC and under Section 3(1)(w)(i)(ii), 3(2)(v) of the Atrocities Act, they be released on P. R. and S.B. of Rs.15,000/- each.
- IV) The appellants shall not tamper with the evidence of the prosecution in any manner.
- V) They shall remain present before the Investigating Officer as and when called.
- VI) They shall not indulge in any criminal activity.

[RAJESH S. PATIL]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm